

117TH CONGRESS  
2D SESSION

# S. 4192

To amend the Internal Revenue Code of 1986 to end the tax subsidy for employer efforts to influence their workers' exercise of their rights around labor organizations and engaging in collective action.

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IN THE SENATE OF THE UNITED STATES

MAY 12, 2022

Mr. CASEY (for himself, Mr. WYDEN, Mrs. MURRAY, Mr. BOOKER, Mr. VAN HOLLEN, Mr. PADILLA, Mr. MARKEY, Ms. BALDWIN, Ms. WARREN, Mr. REED, Mr. BROWN, Mr. CARDIN, Ms. KLOBUCHAR, Mrs. GILLIBRAND, Mr. SANDERS, Mr. WHITEHOUSE, Ms. CORTEZ MASTO, Ms. SMITH, Mr. BLUMENTHAL, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to end the tax subsidy for employer efforts to influence their workers' exercise of their rights around labor organizations and engaging in collective action.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “No Tax Breaks for  
5 Union Busting (NTBUB) Act”.

1   **SEC. 2. FINDINGS.**

2       Congress makes the following findings:

3           (1) The National Labor Relations Act (29  
4           U.S.C. 151 et seq.) declares that it is the right of  
5           employees to form, join, or assist labor organiza-  
6           tions.

7           (2) The National Labor Relations Act further  
8           declares that it is “the policy of the United States  
9           to eliminate the causes of certain substantial ob-  
10          structions to the free flow of commerce and to miti-  
11          gate and eliminate these obstructions when they  
12          have occurred by encouraging the practice and pro-  
13          cedure of collective bargaining and by protecting the  
14          exercise by workers of full freedom of association,  
15          self-organization, and designation of representatives  
16          of their own choosing . . .”.

17          (3) Despite Congress’ intention to give workers  
18          full agency in these matters, many employers regu-  
19          larly choose to involve themselves, lawfully or unlaw-  
20          fully, in the decisions of their employees about  
21          whether to avail themselves of their rights under the  
22          National Labor Relations Act and the Railway  
23          Labor Act (45 U.S.C. 151 et seq.).

24          (4) Employers frequently violate labor laws  
25          around organizing and collective action. The Eco-  
26          nomic Policy Institute finds that in approximately 4

1 of 10 labor organization elections in 2016–2017 em-  
2 ployers were charged with committing an unfair  
3 labor practice. Among larger bargaining units of 61  
4 employees or more, over 54 percent of elections have  
5 an unfair labor practice charge.

6 (5) In practice, these unfair labor practices  
7 often include charges such as employees being ille-  
8 gally fired for labor organization activity, refusal to  
9 bargain in good faith with labor organizations, or co-  
10 ercion and intimidation. Employers also frequently  
11 use captive audience meetings, workplace surveil-  
12 lance, and other lawful or unlawful tactics to sway  
13 labor organization elections.

14 (6) Whether or not there are charges of unlaw-  
15 ful behavior, employers spend millions of dollars to  
16 sway the opinions of their employees with respect to  
17 whether or how to exercise their rights under the  
18 National Labor Relations Act and the Railway  
19 Labor Act. According to the Economic Policy Insti-  
20 tute, companies spent \$340,000,000 yearly on out-  
21 side consultants to sway their workers' opinions  
22 about labor organization activities. This and other  
23 spending interfere with the United States goal of  
24 “encouraging the practice and procedure of collective  
25 bargaining”.

(7) The Internal Revenue Code of 1986 has long recognized that spending by businesses with the purpose of influencing the general public with respect to elections, while it may be lawful, is not tax deductible. Congress should extend that principle to spending done by employers to influence workers' elections and collective bargaining decisions. These free choices to exercise the rights to engage in collective bargaining, labor organization representation, and other lawful collective activities should be made without taxpayer subsidies of undue outside influence from employers.

13 SEC. 3. DENIAL OF DEDUCTION FOR ATTEMPTING TO IN-  
14 FLUENCE EMPLOYEES WITH RESPECT TO  
15 LABOR ORGANIZATIONS OR LABOR ORGANI-  
16 ZATION ACTIVITIES.

17           (a) IN GENERAL.—Section 162(e)(1) of the Internal  
18 Revenue Code of 1986 is amended by striking “or” at the  
19 end of subparagraph (C), by striking the period at the end  
20 of subparagraph (D) and inserting “, or”, and by adding  
21 at the end the following new subparagraph:

22                       “(E) any attempt to influence the tax-  
23                       payer’s employees with respect to labor organi-  
24                       zations or labor organization activities, includ-

1                   ing with respect to the opinion of such employ-  
2                   ees regarding such organizations or activities.”.

8               “(6) LABOR ORGANIZATIONS AND LABOR ORGA-  
9               NIZATION ACTIVITY DEFINED.—For purposes of this  
10              subsection—

11                   “(A) LABOR ORGANIZATION.—The term  
12                   ‘labor organization’ has the meaning given such  
13                   term in section 3 of the Labor-Management Re-  
14                   porting and Disclosure Act of 1959 (29 U.S.C.  
15                   402).

16                  "(B) LABOR ORGANIZATION ACTIVITY.—

17                                     “(i) IN GENERAL.—The term ‘labor  
18                                     organization activity’ includes labor organi-  
19                                     zation elections, labor disputes, and collec-  
20                                     tive actions.

21                             “(ii) OTHER TERMS.—For purposes of  
22                             clause (i)—

described in section 7 of the National Labor Relations Act (29 U.S.C. 157) or any action that is a right of employees or labor organizations under the Railway Labor Act (45 U.S.C. 151 et seq.).

13                             “(III)    LABOR    ORGANIZATION  
14                             ELECTION.—The term ‘labor organi-  
15                             zation election’ means any election de-  
16                             scribed in section 9 of the National  
17                             Labor Relations Act (29 U.S.C. 159)  
18                             or section 2 of the Railway Labor Act  
19                             (45 U.S.C. 152).”.

(c) SPECIAL RULES.—Section 162(e)(4) of the Inter-national Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

23                 “(D) EXPENSES RELATING TO LABOR OR-  
24                 GANIZATIONS OR LABOR ORGANIZATION ACTIVI-  
25                 TIES.—

1                     “(i) IN GENERAL.—For purposes of  
2                     paragraph (1)(E), amounts paid or in-  
3                     curred in connection with attempting to in-  
4                     fluence the taxpayer’s employees with re-  
5                     spect to labor organizations or labor orga-  
6                     nization activities include—

7                     “(I) any amount paid or incurred  
8                     by the taxpayer in connection with an  
9                     action that results in—

10                    “(aa) a complaint issued  
11                     under section 10 of the National  
12                     Labor Relations Act (29 U.S.C.  
13                     160) against the taxpayer for an  
14                     unfair labor practice under sec-  
15                     tion 8(a) of such Act (29 U.S.C.  
16                     158(a)), unless an order of the  
17                     National Labor Relations Board  
18                     related to such complaint is set  
19                     aside in full in accordance with  
20                     subsection (e) or (f) of section 10  
21                     of such Act,

22                    “(bb) a settlement offer re-  
23                     lated to an investigation by the  
24                     National Labor Relations Board  
25                     of a charge of an unfair labor

1 practice under section 8(a) of  
2 such Act (29 U.S.C. 158(a)) that  
3 results in a settlement of such  
4 charge without issuance of a  
5 complaint under section 10 of  
6 such Act (29 U.S.C. 160), or  
7 “(cc) a finding of inter-  
8 ference, influence, or coercion by  
9 a Federal court under section 2  
10 of the Railway Labor Act (45  
11 U.S.C. 152),  
12 “(II) any amount paid or in-  
13 curred (including wages) in producing,  
14 conducting, or attending any meeting  
15 or training—  
16 “(aa) which includes employ-  
17 ees of the taxpayer who are or  
18 who could become bargaining  
19 unit members or members of a  
20 craft or class under the Railway  
21 Labor Act, and  
22 “(bb) at which labor organi-  
23 zations or a labor organization  
24 activity is discussed, and

1                         “(III) any amount which is re-  
2                         quired to be reported under the  
3                         Labor-Management Reporting and  
4                         Disclosure Act of 1959 (29 U.S.C.  
5                         401 et seq.).

6                         “(ii) EXCEPTIONS.—The following  
7                         amounts shall not be treated as amounts  
8                         paid or incurred in connection with at-  
9                         tempting to influence the taxpayer’s em-  
10                         ployees with respect to labor organizations  
11                         or labor organization activities under para-  
12                         graph (1)(E):

13                         “(I) Amounts paid or incurred  
14                         for communications or negotiations di-  
15                         rectly with the designated or selected  
16                         representative of the employees of the  
17                         taxpayer described in section 9(a) of  
18                         the National Labor Relations Act (29  
19                         U.S.C. 159(a)) or under the Railway  
20                         Labor Act (45 U.S.C. 151 et seq.).

21                         “(II) Amounts paid or incurred  
22                         for communications directly with  
23                         shareholders, as may be required  
24                         under section 13 of the Securities Ex-  
25                         change Act of 1934 (15 U.S.C. 78m).

1                     “(III) Amounts paid or incurred  
2                     for communications or consultations  
3                     by the taxpayer in the process of vol-  
4                     untarily recognizing a labor organiza-  
5                     tion as a representative in accordance  
6                     with section 9 of the National Labor  
7                     Relations Act (29 U.S.C. 159).

8                     “(IV) Amounts paid or incurred  
9                     for communications or consultations  
10                  related to the operation of a labor-  
11                  management partnership described in  
12                  a collective bargaining agreement in  
13                  effect between a representative of em-  
14                  ployees of the taxpayer and the tax-  
15                  payer.

16                  “(V) Amounts paid or incurred  
17                  for communications or consultations  
18                  related to the operation of a grievance  
19                  procedure described in a collective  
20                  bargaining agreement in effect be-  
21                  tween a representative of employees of  
22                  the taxpayer and the taxpayer.

23                  “(VI) Amounts paid or incurred  
24                  by a labor organization.

1                         “(VII) Amounts paid or incurred  
2                         for communication materials, includ-  
3                         ing visual or audio media, required to  
4                         be posted for, or provided to, employ-  
5                         ees of the taxpayer by law, including  
6                         under the National Labor Relations  
7                         Act (29 U.S.C. 151 et seq.) or the  
8                         Railway Labor Act (45 U.S.C. 151 et  
9                         seq.).”.

10                         (d) INFORMATION REPORTING.—

11                         (1) IN GENERAL.—Subpart A of part III of  
12                         subchapter A of chapter 61 of the Internal Revenue  
13                         Code of 1986 is amended by inserting after section  
14                         6039J the following new section:

15                         **“SEC. 6039K. INFORMATION WITH RESPECT TO CERTAIN**  
16                         **EMPLOYER ACTIVITIES RELATING TO LABOR**  
17                         **ORGANIZATIONS.**

18                         “(a) IN GENERAL.—Any employer who attempts to  
19                         influence the employer’s employees with respect to labor  
20                         organizations or labor organization activities as described  
21                         in section 162(e)(1)(E) shall file a return (at such time  
22                         and in such manner as the Secretary may by regulations  
23                         prescribe, not more frequently than each quarter in which  
24                         such an attempt occurs and not less frequently than each

1 year in which such an attempt occurs) which includes the  
2 information described in subsection (b).

3       **(b) INFORMATION TO BE PROVIDED.**—Information  
4 required under subsection (a) shall include—

5           “(1) the dates that such activities described in  
6 subsection (a) took place,

7           “(2) a statement indicating whether the activity  
8 was an activity described in item (aa), (bb), or (cc)  
9 of section 162(e)(4)(D)(i)(I),

10          “(3) the amounts paid or incurred for such ac-  
11 tivities,

12          “(4) a copy of any disclosures which are re-  
13 quired to be reported under the Labor-Management  
14 Reporting and Disclosure Act of 1959 (29 U.S.C.  
15 401 et seq.), and

16          “(5) such other information as the Secretary  
17 may prescribe.”.

18           **(2) PENALTY.**—Subparagraph (B) of section  
19 6724(d)(1) of such Code is amended—

20           (A) by striking the comma at the end of  
21 clause (xxvii), as added by the Infrastructure  
22 Investment and Jobs Act, and inserting “, or”,  
23 and

24           (B) by adding at the end the following new  
25 clause:

1                     “(xxviii) section 6039K (relating to  
2                     information with respect to certain em-  
3                     ployer activities relating to labor organiza-  
4                     tions), and”.

5                     (3) CLERICAL AMENDMENT.—The table of sec-  
6                     tions for subpart A of part III of subchapter A of  
7                     chapter 61 of such Code is amended by inserting  
8                     after the item relating to section 6039J the fol-  
9                     lowing new item:

“Sec. 6039K. Information with respect to certain employer activities relating to  
labor organizations.”.

10                   (e) CONFORMING AMENDMENTS.—

11                   (1) The heading for subsection (e) of section  
12                   162 of the Internal Revenue Code of 1986 is amend-  
13                   ed by striking “AND POLITICAL EXPENDITURES”  
14                   and inserting “, POLITICAL EXPENDITURES, AND  
15                   LABOR ORGANIZATION EXPENDITURES”.

16                   (2) The heading of subparagraph (C) of section  
17                   162(e)(4) of such Code is amended by striking “AND  
18                   POLITICAL ACTIVITIES” and inserting “, POLITICAL,  
19                   AND LABOR ORGANIZATION ACTIVITIES”.

20                   (f) EFFECTIVE DATE.—The amendments made by  
21                   this section shall apply to taxable years beginning after  
22                   the date of the enactment of this Act.

